

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RONALD E. FORD)	
Claimant)	
VS.)	
)	
PPG INDUSTRIES, INC.)	Docket No. 242,425
Respondent)	
AND)	
)	
HARTFORD INSURANCE & INDEMNITY CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the post-award Order for attorney's fees entered by Administrative Law Judge (ALJ) Jon L. Frobish on May 1, 2003. The Appeals Board (Board) heard oral argument on October 17, 2003, in Wichita, Kansas.

APPEARANCES

Steven R. Wilson of Wichita, Kansas, appeared for claimant. Richard J. Liby of Wichita, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board includes the transcript of the February 6, 2003 Post-Award Hearing and the exhibits attached thereto, together with the pleadings, correspondence and other documents contained in the administrative file. During oral argument to the Board, the parties agreed that the record should include the April 30, 2003, letter by claimant's counsel to the ALJ¹ which includes the itemization of time spent by claimant's counsel in relation to the respondent's post-award request for termination of

¹ Brief of Appellants Respondent and Insurance Carrier, Ex. A (filed June 13, 2003).

medical care, and the itemization of time spent by counsel for respondent and its insurance carrier,² as well as the exhibits attached to claimant's letter brief to the Board.³

ISSUES

What is a reasonable attorney fee for these services provided claimant in this post-award proceeding?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant's counsel requested that the ALJ award his attorney's fees for representing claimant in the post-award proceeding to terminate medical treatment.⁴ The ALJ awarded the full amount requested, \$2,550 based upon 17 hours at \$150 per hour. Respondent and its insurance carrier contend this is excessive.

After reviewing the record and the itemizations of time spent, the Board finds that the one-half hour spent on November 1, 2002, preparing the letter transmitting the YMCA membership bill to respondent's counsel should be disallowed because it was a ministerial act.⁵ In addition, the hour charged on February 28, 2003, for reviewing the transcript of the February 6, 2003 hearing, should be reduced to one-half hour. The remaining time itemized is otherwise reasonable and attorney fees based thereon should be allowed.

Accordingly, claimant's counsel is awarded \$2,400 for 16 hours of work at \$150 per hour.

Claimant also requests additional fees for his time incurred defending his fees on appeal. Generally, such a request must first be presented to and decided by the ALJ.⁶ During oral argument to the Board, however, the parties agreed that the Board may decide this request without an Order from the ALJ. Claimant's counsel requests \$450 for three hours at \$150 per hour. Respondent objects on the grounds that the appeal was not in connection with obtaining a benefit for or providing services to claimant. Instead, it was only time spent defending the reasonableness of the amount of the attorney fee request.

² Brief of Appellants Respondent and Insurance Carrier, Ex. B (filed June 13, 2003).

³ Letter Brief from Steven R. Wilson to Kansas Workers Compensation Appeals Board (filed June 25, 2003).

⁴ See K.S.A. 44-536(g) and K.S.A. 44-510k(c).

⁵ See *May v. University of Kansas*, 25 Kan. App. 2d 66, 957 P.2d 1117 (1998).

⁶ See K.S.A. 44-555c(a).

Respondent contends the Workers Compensation Act ⁷ does not provide for nor contemplate awarding additional attorney fees for this. The Board disagrees. “[I]n statutorily authorized fee cases an award of fees for litigating the amount of fees does not inure solely to the attorney’s benefit.” ⁸ Rather, the purpose behind the statutory fee authorization is the encouragement of attorneys to represent claimants in circumstances where there is no additional award of disability compensation from which a fee could be taken. ⁹ Thus, the primary purpose of the attorney fee statute is to benefit the claimant. “The fact that the award of such fee ultimately results in the [claimant’s] attorney being paid to litigate the fee is collateral and incidental to the primary purpose of indemnifying [a claimant] for the cost of counsel. ¹⁰

Award

Wherefore, the Appeals Board modifies the May 1, 2003 Order of Administrative Law Judge Jon L. Frobish to award claimant's counsel attorney's fees in the amount of \$2,400, plus the additional sum of \$450 for this appeal, for a total attorney fee award of \$2,850.

IT IS SO ORDERED.

Dated this ____ day of October 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

⁷ K.S.A. 44-501 et.seq.

⁸ *Moore v. St. Paul Fire Mercury Ins. Co.*, 269 Kan. 272, 277, 3 P.3d 81 (2000).

⁹ See K.S.A. 44-536(g).

¹⁰ *Moore v. St. Paul Fire Mercury Ins. Co.*, 269 Kan. at 279-280.

c: Steven R. Wilson, Attorney for Claimant
Richard J. Liby, Attorney for Respondent
Jon L. Frobish, Administrative Law Judge
Paula Greathouse, Workers Compensation Director